IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO. 16840 of 2006

DATE OF DECISION: October 24, 2006.

Ashok Kumar and another ....Petitioners.

Versus

State of Punjab and others ...Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. J.S. Thind, Advocate for the petitioners.

J.S. Khehar, J.

The Central Recruitment Board advertised 675 posts of Constable (General Duty) for appointment to the Punjab Armed Police (hereinafter referred to as `the PAP') and the Indian Reserved Batallion (hereinafter referred to as `the IRB') on 24.2.2006. A perusal of aforesaid advertisement reveals that out of the 675 posts advertised, 169 posts were reserved to be filled up from amongst Scheduled Castes candidates. The advertisement also reveals that out of the 169 posts, to be filled up from amongst the Scheduled Castes category, 27 posts were reserved for only such Scheduled Castes, who were erstwhile Army personnel. Likewise, 7 of the posts, reserved for Scheduled Castes category, were to be filled up from amongst Sports personnel.

Both the petitioners are Scheduled Castes candidates. Since they fulfilled all the conditions of eligibility depicted in the advertisement

and were desirous to be appointed as Constable (General Duty), they submitted their application forms in response to the advertisement dated 24.2.2006, seeking appointment against the reserved vacancies for Scheduled Castes candidates.

The petitioners were invited for a written examination on 11.6.2006. Both the petitioners cleared the written examination and were thereafter invited for an interview on 8.8.2006. Both the petitioners appeared for the interview on 8.8.2006. The result of the selection process was declared on 4.9.2006. The names of the petitioners did not figure in the process of selection. It is, therefore, that the petitioners have impugned the process of selection through the instant writ petition.

The solitary contention of the learned contention of the learned counsel for the petitioners is, that all the 169 posts, reserved to be filled up from amongst Scheduled Castes candidates, ought to have been filled up from the Scheduled Castes category alone, without any further reservation therein. In other words, the contention of the learned counsel for the petitioners is, that it is not permissible in law to fill up 27 of the posts reserved for Scheduled Caste candidates from amongst Ex-servicemen. And likewise, it was not permissible to fill up 7 of the posts reserved for Scheduled Castes candidates from amongst Sports personnel.

In order to substantiate his aforesaid contention, learned counsel for the petitioners relied on the decision rendered by the Apex Court in E.V. Chinnaiah V. State of Andhra Pradesh and others, 2005(1) Recent Services Judgments 247. A perusal of the factual position which came up for adjudication at the hands of the Apex Court in E.V.

Chinnaiah's case (supra) reveals that 15 percent of the posts were reserved for Backward Classes in the State of Andhra Pradesh. A Presidential List notified 57 castes in the State of Andhra Pradesh to be Backward Classes for the State of Andhra Pradesh. These 57 castes were sub-divided into four groups referred to as Group A, Group B, Group C and Group D. One percent of the seats reserved for Backward class candidates was laid down to be filled up from Group A, 7 percent of the seats of backward class candidates were reserved to be filled up from Group B, 6 percent of the seats of backward class candidates were reserved to be filled up from Group C, and 1 percent of the seats of backward class candidates were reserved to be filled up from Group D. The action of the State of Andhra Pradesh in dividing the 57 castes of the Backward Classes candidates, enumerated in the Presidential List, into four categories for independent reservation, came up for consideration at the hands of the Apex Court in E.V. Chinnaiah's case (supra). The Apex Court recorded the following conclusion on the issue in hand:-

> "23. We will now consider whether the Scheduled Castes List prepared by the President under Article 341(1) forms one class of homogeneous group or does it still continue to be a list consisting of different castes, sub-castes, tribes etc. We have earlier noticed the fact that the Constitution has provided for only one list of Scheduled Castes to be prepared by the President with a limited power of inclusion and exclusion by the Parliament. The Constitution intended that all the castes included in the said Schedule would be 'deemed to be" one

class of persons but arguments have been addressed to the contrary stating that in spite of the Presidential List these castes continue to hold their birth mark and remain to be separate and individual caste though put in one List by the President. It is the contention of the respondents that by merely including them in a List by the President these castes do not become a homogeneous group, therefore, to fulfil the constitutional obligation of providing an opportunity to these castes more so to the weaker amongst them, it is permissible to make a classification within this class, as was made permissible in regard to other backward classes (OBC) by this Court in Indra Sawhney's case (supra). We cannot accept this argument for than one reason.

24. It cannot be denied that all the castes included in the Presidential List for a State are deemed to be Scheduled Castes, which means they form a class by themselves.

25. In State of Kerala & Anr. Vs. N.M. Thomas and others, 1976(2) SCC 310 para 82 at 348, Mathew, J. discussing the status of the caste found in the Presidential List observed:-

> "This shows that it is by virtue of the notification of the President that the Scheduled Castes come into being. Though the members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new Status by virtue of the Presidential notification". (Emphasis supplied)

26. Krishna Iyer,J. speaking in the same case with reference to the status of castes included in the Presidential List had this to say:-

> "We may clear the clog of Article 16(2) as it stems from a confusion about caste in the terminology of scheduled castes and scheduled tribes. This later expression has been defined in Articles 341 and 342. A bare reading brings out the quintessential concept that they are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowliest and in need of massive State aid and notified as such by the President." (Para 135) (Emphasis supplied.)

27. According to Justice Krishna Iyer, though there are no castes, races, groups, tribes, communities or parts thereof in Hinduism, the President on investigation having found some of the communities within amalgam as being lowliest and in need of massive State aid included them in one class called the Scheduled Castes. The sequitor thereof is that Scheduled Castes are one class for the purposes of the Constitution.

28. Justice Fazal Ali in the very same case referring to caste enumerated in the list of Scheduled Caste states thus i paragraph 169:

> "Thus in view of these provisions the members of the scheduled castes and the scheduled tribes have been

given a special status in the Constitution and they constitute a class by themselves." (Emphasis supplied).

29. Thus, from the scheme of the Constitution, Article 341 and above opinions of this Court in the case of N.M. Thomas (supra) it is clear that the castes once included in the Presidential List, form a class by themselves. If they are one class under the Constitution, any division of these classes of persons based on any consideration would amount to tinkering with the Presidential List."

It is, therefore, apparent that in E.V. Chinnaiah's case (supra) the Supreme Court clearly concluded that the list of Backward Classes in a State constituted one homogeneous class, and that, there could be no bifurcation /fragmentation thereof.

It is not possible for us to accept the aforesaid contention of the learned counsel for the petitioners on the basis of the decision rendered by the Apex Court in E.V. Chinnaiah's case (supra). In so far as the list of Scheduled Castes in the State of Punjab is concerned, the advertisement does not depict any bifurcation or further classification thereof. In so far as the advertisement dated 24.2.2006 is concerned, 169 posts were reserved for Scheduled Castes candidates . It is not a matter of dispute that consequent upon the issuance of the aforesaid advertisement, 169 posts reserved for Scheduled Castes candidates were actually filled up from amongst Scheduled Castes candidates. Although, in filling up of 169 posts reserved for Scheduled Castes, the authorities introduced a reservation of 27 posts of Ex-servicemen and 7 posts for Sports personnel,

this action at the hands of the respondents, in our view, has no nexus with the conclusions drawn by the Apex Court in E.V. Chinnaiah's case (supra). Accordingly, it is not possible for us to accept the plea of the learned counsel for the petitioners, specially when all the 169 posts reserved for Scheduled Castes candidates have actually been filled up from amongst Scheduled Castes candidates, without any of the aforesaid 169 posts being ear-marked for specified castes included in the list of Scheduled Castes notified for the State of Punjab.

No other contention was advanced by the learned counsel for the petitioners.

For the reasons recorded above, we find no merit in the instant writ petition and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

October 24, 2006.
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RESERVED JUDGMENT IN CWP NO. 16840 of 2006

HON'BLE MR. JUSTICE J.S. KHEHAR